

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK

---

In re:

BSC DEVELOPMENT BUF LLC,

Debtor.

---

Chapter 11  
Case No. 09-11550

**STIPULATION AND ORDER BETWEEN THE CHAPTER 11 TRUSTEE, RSM  
MCGLADREY, INC. AND FREED MAXICK & BATTAGLIA, P.C. REGARDING  
TURNOVER OF DOCUMENTS**

STIPULATION entered into as of the 9 day of April, 2010 between Morris Horwitz, the Chapter 11 Trustee ("Trustee") of BSC Development BUF LLC ("Debtor"), by and through his attorneys, Hodgson Russ LLP, RSM McGladrey, Inc. and Freed Maxick & Battaglia, P.C. (RSM McGladrey, Inc. and Freed Maxick & Battaglia, P.C. are hereinafter collectively referred to as the "Accounting Firms"), by and through their attorneys, Hiscock & Barclay LLP with respect to the Accounting Firms turnover of the books and records of the Debtor, together with the corporate tax returns or appropriate tax schedules of the debtor for the fiscal years 2007 and 2008 and detail for alleged "progress billing."

WHEREAS, the Trustee has requested that the Accounting Firms deliver to the Trustee all books and records of the Debtor together with the corporate tax returns or appropriate tax schedules of the Debtor for the fiscal years 2007 and 2008 and detail for alleged "progress billing" ("Requested Information"), and

WHEREAS, the Trustee has specifically and in writing expressly waived any privilege between the Debtor and the Accounting Firms, and

WHEREAS, the Trustee has filed a Motion for Turnover and Further Relief ("Motion"), dated March 2, 2010, requesting the following relief: (i) the turnover of the Requested Information within seven (7) days after entry of an Order approving of the Motion and (ii) an order directing the Accounting Firms to reimburse the bankruptcy estate for the expense incurred in the preparation, filing, service and court appearance associated with the Motion, and

WHEREAS, the Accounting Firms objected to the Order on March 10, 2010 by filing the Affidavit in Response to Trustee's Motion for Order Directing Turnover, executed by Don L. Warrant, a Director of both of the Accounting Firms ("Objection"), and

WHEREAS, the Objection states that the Accounting Firms do not oppose the relief sought to the extent that the Motion seeks a turn-over of certain books and records, but do oppose the Motion to the extent that the Trustee seeks reimbursement of fees and expenses, and

WHEREAS, the Objection indicates that the Accounting Firms had been engaged to perform services on behalf of both the Debtor and its sole member, Bashar Issa; and

WHEREAS, the Objection includes a list of the books and records in the Accounting Firms possession pertaining to the Debtor, and

WHEREAS, the Accounting Firms have identified certain federal laws and rules relating to the disclosure of tax information in the absence of either client consent or court order, and

WHEREAS, the Accounting Firms requested Bashar Issa's consent by letter dated May 5, 2009 to disclose certain information to the Trustee relating to the Debtor, which letter was not responded to, and

WHEREAS, the Accounting Firms, having acted consistent with their obligations to their client, will fully comply with an order of the Court with respect to the delivery of any or all of the information in their possession as listed within the Objection as pertaining to the Debtor, and

WHEREAS, the parties desire to embody the provisions of § 542 of the Bankruptcy Code in this Stipulation and consent to the entry of this Stipulation as an Order of the United States Bankruptcy Court for the Western District of New York ("Bankruptcy Court").

In consideration of the foregoing premises, and the agreement set forth below, the Trustee and the Accounting Firms hereby stipulate as follows:

1. The Accounting Firms, having acted consistent to their obligations to their client, will turnover the following information in their possession pertaining to the Debtor as referred to within the Objection, within ten (10) days upon entry of this Stipulation as an Order of the Court pursuant to § 542 of the Bankruptcy Code:

From the files under the client name BSC Development Buf, LLC:

- Consulting services engagement letter dated August 16, 2006;
- Empire Zone Program services engagement letter dated August 17, 2006
- 2007 and 2008 Empire Zone and Renewal Community tax credit files;
- 2007 and 2008 internal accounting records;
- 2007 and 2008 Schedule E tax preparation work papers;
- 2007 and 2008 Forms 1096, *Annual Summary and Transmittal of U.S. Information Returns*, and 1099-MISC;
- Copies of bank statements for 2007 and 2008.

2. The Trustee will withdraw his request for fees and expenses incurred in the preparation, filing, service and court appearance associated with the Motion.

3. Any proceeding relating to this Stipulation may only be brought in the Bankruptcy Court.

4. If any of the provisions of this Stipulation held to be unenforceable in whole or in part, the remaining provisions of this Stipulation shall not be affected thereby.

5. No failure or delay in exercising any other right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder. This

Stipulation sets forth the entire agreement and understanding of the parties hereto, and supersedes all prior agreements and understandings between the parties hereto with respect to the subject matter hereof.

6. This Stipulation may be executed in separate counterparts, each of which shall be deemed to be and to constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Stipulation by facsimile transmission or other electronic means shall be effective as delivery of a manually executed counterpart thereof.

7. This Stipulation shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective successors and assigns.

8. Both the Accounting Firms and the Trustee reserve their rights as to future turnover motions or requests for information regarding the Debtor and Bashar Isaa.

[THIS SPACE IS LEFT INTENTIONALLY BLANK. SIGNATURE LINE FOLLOWS.]

**HODGSON RUSS LLP**  
*Attorneys for the Chapter 11 Trustee*

By: 

Garry M. Graber, Esq.

The Guaranty Building  
140 Pearl Street  
Buffalo, New York 14202  
Telephone: (716) 848-1273  
Fax: (716) 849-819-4666  
ggrab@hodgsonruss.com

**HISCOCK & BARCLAY, LLP**  
*Attorneys for RSM McGladrey, Inc. and  
Freed Maxick & Battaglia, P.C.*

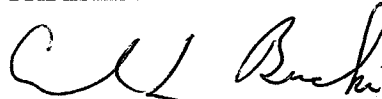
By: 

J. Eric Charlton, Esq.

One Park Place  
300 South State Street  
Syracuse, New York 13202  
Telephone: (315) 425-2716  
Fax: (315) 425-8576  
ECharlton@hblaw.com

APR 28 2010

SO ORDERED:



HON. CARL L. BUCKI  
UNITED STATES BANKRUPTCY JUDGE

